IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

FAO.No. 66 of 2006()

AGAINST THE ORDER DATED 10/02/2006 IN IA 2079/2005 IN OS.212/2004 of III ADDL.SUB COURT, KOZHIKODE

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APPELLANT/CLAIM PETITIONER.

CHERADATH C. BALAN, AGED 57 YEARS,
S/O. KANARAN, NANMINDA AMSOM DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS/RESPONDENTS/PLAINTIFF & DEFENDANT:
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1. SHYAMALA SATHYAN, AGED 51 YEARS,
W/O. SATHYAN, KALLARAM KOTTIL,
"SYAMALA" PUTHIYANGADI AMSOM DESOM.

2. SATHYAN, AGED 53 YEARS,
S/O. RARICHAN, -DO-

BY ADV. SRI.JESWIN P.VARGHESE
SRI.P.V.KUNHIKRISHNAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 21/11/2007, ALONG WITH FAO NO. 88 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

FAO.NO.66/06

ORDER ON I.A.NO.968/06 & I.A.NO.4064/07 IN FAO.NO.66/2006

Dismissed

Sd/- P.R.Raman, Judge.

21/11/2007 Sd/- V.K.Mohanan, Judge.

True Copy

P.S. to Judge

P.R. RAMAN & V. K. MOHANAN, JJ.

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F.A.O. NOS. 88 & 66 OF 2006

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DATED THIS, THE 21ST DAY OF NOVEMBER, 2007.

J U D G M E N T

Raman, J.

The appellant in F.A.O.88/2006 is the decree holder in O.S. 212/2004 which was a suit filed by the wife against the husband for realisation of money due, which was eventually decreed, though ex parte. Before the judgment, the property belonging to the husband was attached. Subsequent to the decree, on a third party claim for lifting the attachment, the court below suo motu reviewed its own decree holding that this is a family dispute and as such only the Family Court has jurisdiction and so the decree is a nullity. After setting aside the decree, the plaint was ordered to be returned for presenting before appropriate court. Aggrieved thereby, the appellant has preferred this appeal.

2. In view of the above order passed by the court below, the application for lifting the attachment was also dismissed against which the third party claimant has filed F.A.O.66 of 2006. Both the appeals are thus inter-connected and arising from the same order and hence heard together.

3. The appellant in F.A.O. 66/2006 would contend that the court

below has no power to suo motu review a decree passed and to return the plaint. He also contended that the property in question admittedly belonged to the husband and therefore, there is no dispute with regard to the title thereto and that being a money suit against the husband for realisation of money based on a decree ultimately that may be passed , the property was attached and the suit itself was decreed. Being a money suit, it cannot be said to be beyond the jurisdiction of the civil court. Therefore, the question as to whether the court below has got suo motu power to review the decree, arises for consideration.

4. As per Section 114 of the Code of Civil Procedure, any person considering himself aggrieved can approach the court seeking review of the judgment/order, provided no appeal therefrom is preferred or no appeal will lie against the said judgment/order. The power of review is a conferment by the Statute and the court has no inherent power of review as held by the apex court in **P.N. THAKERSHI V. PRADYUMANSINGJI (**AIR 1970 SC 1273) Power is conferred under the section and the court can exercise the power subject to restrictions imposed thereunder. On a plain reading of the section, it can be seen that the power of review is conferred on the court only when review is sought for by an aggrieved

person. Admittedly, no such person who is said to be aggrieved has approached the court below seeking a review. As such, the court below could not have suo motu reviewed the decree passed by it. A learned Judge of this Court in **Mohankumar v. Natarajan (** 1998 (1) KLT 310) held that under Order 47 Rule 1 CPC an application for review will lie by an aggrieved party, but the court cannot review its own order or decree suo motu in the absence of any such application. We agree with the said view expressed by the learned Single Judge. In the circumstances, we hold that the order passed by the court below suo motu reviewing the decree is without jurisdiction and hence it is set aside. The question as to whether the decree is a nullity or not in the circumstances, does not arise for consideration.

5. The court below shall pass fresh orders in I.A. 2079/2005 after hearing both sides. The court below has not given any valid reason as to why the claim petition is not maintainable and no reasons are stated. In the circumstances, the order dismissing the petition as not maintainable is wrong. The court may pass appropriate orders after hearing both sides.

6. Even though the learned counsel appearing for the appellant submitted that a petition is maintainable even after passing the decree and

placed reliance on the decision in **J. Rama Murthy v. Srinivas Corporation General Merchants & Commission Agents (**AIR 1989 AP 58), we find that what was held in that decision is that the proceeding can be continued when an application for lifting the attachment is already filed. Admittedly, in this case, the application is filed only after the decree is passed and therefore, the principle in **Rama Murthy's** case (supra) will not apply. In the circumstances, the matter is remitted to the court below for reconsideration.

P.R. RAMAN,
(JUDGE)

V. K. MOHANAN,
(JUDGE)

knc/-